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| NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203 | | | SORKIN, DAVID L | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/727,559

Applicant(s)

MCGILL, SHANE R.

Examiner

David L. Sorkin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☒ Certified copies of the priority documents have been received in Application No. 09/530,325.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/2003.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 33-40, 45, 47 and 48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 33-40, 47 and 48, the terms "impeller means" and "shaft means" are indefinite for the following reason. Since no function is specified by the words "impeller" and "shaft" it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967). Also, in claim 38 there is lack of antecedent basis for "the impeller" and in claim 47, there is lack of antecedent basis for "the impeller means". Also, in claim 45, there is lack of antecedent basis for "the container".

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 33-39, 41 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated Waters (US 2,930,596). Regarding claim 33, Waters ('596) discloses a container (10) comprising a vessel (11) having an upper opening; a lid (20 including 22) for closing the opening; blending means including an impeller (26) mounted on the lid. The vessel is

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nestable (see col. 1, line 62-65; Fig. 1) and can be used in the manner discussed in the claim. Regarding claim 34, contents intended to be present in the container during an intended operation would be capable of being heated. However, "Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claim" *Ex parte Thilbault*, 164 USPQ 666, 667 (Bd. App. 1969). Regarding claim 35, the container could be used in the manner discussed in the claim. Regarding claims 36 and 37, there is an opening (40) through the lid. Regarding claim 38, the impeller is mounted for rotation relative to the lid by location through an opening (defined by 24) in the lid as a push fit, and the impeller is secured in the opening by integral clip (see Fig. 1). Regarding claim 39, the impeller includes a shaft (25) forming a bearing surface against the walls (24) of the opening, the shaft being integral with impeller blades (27) of the impeller. Regarding claim 41, Waters ('596) discloses a lid comprising an impeller (26) rotatable relative to the lid and having blades (27) adjacent to and projecting from one side of the lid, the impeller being located one the lid through an opening (defined by 24) in the lid as a push fit through said opening and being secured in the opening by an integral clip (see Fig. 1). Regarding claim 43, the impeller (43) includes a shaft (25) forming an outer bearing surface against walls (24) of the opening.

5. Claims 33-35, 38, 39, 41, 43-45, 47 and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Boyce (US 4,487,509). Regarding claim 33, Boyce ('509) discloses a container comprising a vessel (12) having an upper opening, a lid (14) for closing the opening, blending means including an impeller (16) mounted on the lid for

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rotation relative thereto and for location within the container. The container has a narrow end so as to be nestable (see Figs. 1 and 3). Regarding claim 34, contents intended to be present in the container during an intended operation would be capable of being heated. However, "Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claim" *Ex parte Thilbault*, 164 USPQ 666, 667 (Bd. App. 1969).

Regarding claim 35, the container could be used in the manner discussed in the claim.

Regarding claim 38, the impeller is mounted for rotation relative to the lid by location through an opening in the lid as a push fit, and the impeller is secured in the opening by integral clip (see Fig. 3). Regarding claim 39, the impeller includes a shaft (48) forming a bearing surface against the walls of the opening, the shaft being integral with impeller blades (50) of the impeller. Regarding claim 41, Boyce ('509) discloses a lid comprising an impeller (16) rotatable relative to the lid and having blades (50) adjacent to and projecting from one side of the lid, the impeller being located one the lid through an opening in the lid as a push fit through said opening and being secured in the opening by an integral clip (see Fig. 3). Regarding claim 43, the impeller (16) includes a shaft (48) forming an outer bearing surface against walls of the opening. Regarding claim 44, Boyce ('509) discloses a blending apparatus for blending food product comprising a vessel (12) and a lid (14) for the vessel, the lid housing blending means including an impeller (16) extending into the vessel and being rotatable relative to the lid, drive means (108) for driving the impeller, mounting means (18 or a portion thereof), and securing means (32,36). Regarding claim 45, the vessel is invertably mountable on the

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mounting means during the blending operation, the blending means extending upwards into the body of the vessel, and the securing means restraining movement of the container from a blending position. Regarding claim 47, Boyce ('509) discloses an apparatus (10) comprising a vessel (12) having an upper opening, a lid (14) for closing the opening, blending means including an impeller (16) mounted on the lid for rotation relative to the lid, drive means (108), adapter means (112) and the vessel is nestable with other vessels (see Figs. 1 and 3). Regarding claim 48, a mounting means (18) includes the drive means (108) and the adapted (112) is arranged to fit at one end onto the mounting means, and, at the other end, the adapter is arranged to receive said vessel in an inverted position with the lid lowermost (see Fig. 3).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 40 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waters (US 2,930,596) in view of Salzman (US 4,722,608). Waters ('596) fails to disclose the impeller being made of plastic. Salzman ('608) teaches a plastic impeller (see col. 1, lines 5-66). It would have been obvious to one of ordinary skill in the art to have made the impeller of Waters ('596) from plastic because Salzman ('608) explains that plastic provides an impeller with the advantage of being light weight and higher speed and lowers costs (see col. 1, lines 57-66).

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8. Claims 40 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyce (US 4,487,509) in view of Salzman (US 4,722,608). Boyce ('509) fails to disclose the impeller being made of plastic. Salzman ('608) teaches a plastic impeller (see col. 1, lines 5-66). It would have been obvious to one of ordinary skill in the art to have made the impeller of Boyce ('509) from plastic because Salzman ('608) explains that plastic provides an impeller with the advantage of being light weight and higher speed and lowers costs (see col. 1, lines 57-66).

9. Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Boyce (US 4,487,509) in view of Uesaka (US 4,741,174). Boyce ('509) fails to disclose the vessel being in a jug. Uesaka ('174) explains that placing a vessel in a jug provides the advantage of temperature control (see col. 1, lines 44-49; Fig. 1). It would have been obvious to one of ordinary skill in the art to have placed the vessel in a jug to achieve the advantage of temperature control as taught by Uesaka ('174) (see col. 1, lines 44-49; Fig. 1).

Double Patenting

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 33-45, 47 and 48 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Patent No. 6,854,875. Although the conflicting claims are not identical, they are not patentably distinct from each other because, all the limitations of each of these claims are present in the claims of US 6,854,875. Claim 1, recites the vessel, lid, blending means including an impeller, securing means and drive means. The further limitations of claims 2, 3, 4, 5 and 6 of US 6,854,875 are the same as those of instant claims 36, 37, 38, 39 and 40, respectively. The further limitations of claims 6 and 5 of US 6,854,875 are the same as those of instant claims 42 and 43, respectively. These adapter of instant claims 47 and 48 is recited in claim 7 of the patent.

12. Claims 46 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Patent No. 6,854,875 in view Uesaka (US 4,741,174). The claims of U.S. Patent No. 6,854,875 do not recite the vessel being in a jug. Uesaka ('174) explains that placing a vessel in a jug provides the advantage of temperature control (see col. 1, lines 44-49; Fig. 1). It would have been obvious to one of ordinary skill in the art to have placed the vessel in a jug to achieve the advantage of temperature control as taught by Uesaka ('174) (see col. 1, lines 44-49; Fig. 1).

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David L. Sorkin
Primary Examiner
Art Unit 1723

DLS